

Serial No. 10/073,717
Reply to Office Action of June 23, 2004

REMARKS

With this amendment, claims 1-6, 9, and 12-16 are pending. By way of this amendment, claims 1 and 5 have been amended. Claims 12-16 have been added. Support for the new claims 12-16 is found in original claim 5 and as such, it is submitted that no new matter has been added by way of this amendment. Support for the amendments to claim 1 is found on page 4, line 10, among other places within the specification. As such, the amendments to claim 1 have not added new subject matter hereto.

Pending claims 1-6 and 9 have been previously been rejected under 35 U.S.C. §103(a) as being obvious over Laipply (U.S. 4,696,393), in view of Joshi (U.S. 6,415,808).

Applicant notes with appreciation the additional statements provided in Paper 06182004, indicating that Joshi is only cited for the teaching of organic tin salts as known antiseptic agents.

Laipply is cited for the teaching of the claimed elements of independent claim 1, with the exception of a chemical reactant per pending claim 1. It is Applicant's understanding that Joshi et al. is cited to bolster Laipply with respect to the lack of disclosure as to a chemical reactant.

Claim 1 has been amended to emphasize that the chemical reactant is one active in an anaerobic polymerization reaction. This amendment is not intended to vary the scope of the claim, but rather to add emphasis as to the motivation of the invention. Applicant submits that the basis of the invention is exactly the point where Laipply is lacking: namely, delivery of an anaerobic polymerization reaction chemical reactant by way of such an applicator. The Applicants, by discovering the source of the problem associated with swab ampules. The fact that the various component parts of the claimed invention are found in separate references does not indicate that one of ordinary skill in the art at the time of the invention would have expected a problem to exist.

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The Court in *In Re Nomiya*, 509 F.2d 566, 572, 184 USPQ 607, 612 (CCPA 1975), stated as follows:

[Where] there is no evidence of record that a person of ordinary skill in the art at the time of [an applicant's] invention would have expected [a problem], . . . it is not proper to conclude that [an invention], which solves this problem . . . would have been obvious to that hypothetical person of ordinary skill in the art. The significance of evidence that a problem was known in the prior art is, of course, that knowledge of a problem provides a reason or motivation for workers in the art to apply their skill to its solution.

Additionally, in *In Re Peehs*, 612 F.2d 1287, 204 USPQ 835 (CCPA 1980), the Court held that to establish a prima facie case of obviousness where the advance in the art lies in the discovery of the problem, or the source of the problem, the examiner would have to provide evidence that a person of ordinary skill in the art, at the time of the invention, would have expected a problem to exist.

The present specification at page 3, lines 12-21; page 4, lines 18-21; and Table 1, found on page 9, lines 1-4, shows comparable or better tensile strength relative to a conventional swab ampule while removing the limitations of gravity feed, complex construction, and wasteful use of unneeded material within an ampule.

Applicant concedes at page 6, line 16, that Laipply is prior art to the invention. Applicant further concedes that organo-tin compounds have been used previously as catalysts. However, Applicant believes the present invention to be patentable based on the discovery of the problems associated with swab ampules in the context of anaerobic cure adhesives.

Absent evidence provided by the Examiner that a person of ordinary skill in the art at the time of the invention would have expected a problem to exist, reconsideration and allowance of the pending claims is hereby requested.

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Summary

Claims 1-6, 9, and 12-16 are pending in this application. Claims 1 and 5 have been amended and new claims 12-16 have been added. Reconsideration and allowance of these claims and the passing of this application to issuance are solicited. Should the Examiner find to the contrary, it is respectfully requested that the undersigned attorney in charge of this application be contacted at the telephone number given below to resolve any remaining issues.

Respectfully submitted,



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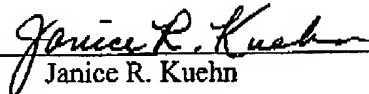
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CERTIFICATE UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being sent to the United States Patent Office via facsimile (703) 872-9306 on August 16, 2004.


Janice R. Kuehn